STATE OF CALIFORNIA FISH AND GAME COMMISSION INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION (Pre-publication of Notice Statement)

Amend Sections 150, 150.02, 150.03 and 150.05
Title 14, California Code of Regulations
Re: Nearshore Fishery Restricted Access Program
And Deeper Nearshore Species Fishery Permit

I. Date of Initial Statement of Reasons: November 1, 2003

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: December 5, 2003

Location: Sacramento, CA

(b) Adoption Hearing: Date: February 6, 2004

Location: Long Beach, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Current regulations govern the nearshore fishery restricted access program and include initial permit issuance criteria for transferable Nearshore Fishery Permits (NFP), non-transferable NFPs for 20-year fishermen as required by Fish and Game Code Section 8101, trap endorsements, and Nearshore Fishery Bycatch Permits (NFBP). In addition, current regulations provide regional capacity goals, permit transferability, application fees and renewal deadlines, as well as gears authorized for use in the fishery.

The proposed changes to the nearshore fishery restricted access program regulations would authorize issuance of non-transferable trap endorsements to individuals who both qualify for non-transferable NFPs and meet the qualifying criteria for a trap endorsement. The proposed changes would also remove the requirement for a finfish trap permit, although general trap permits would still be required. Additionally, the proposed changes would clarify language regarding initial issuance criteria for the North Coast Region, clarify status of non-transferable permits when the permit holder dies, place permit applications in the regulations, and

allow the Commission to adopt different transfer requirements when a region is at or below the capacity goal. Finally, the proposed changes would align the nearshore bycatch fishery seasons and cumulative trip limits to the directed fishery.

<u>Authorize non-transferable trap endorsements</u>

Existing regulations allow only transferable NFP holders to qualify for a trap endorsement, even though many in the South Coast Region possessed limited entry finfish trap permits. One of the goals of the nearshore fishery restricted access program was to incorporate finfish trap permit holders into the program. This proposed regulatory change would help to meet that goal by allowing 20-year fishermen with non-transferable NFPs to obtain a non-transferable trap endorsement if they meet the trap endorsement criteria for their region.

Remove finfish trap permit requirements

Existing regulations require NFP holders with trap endorsements fishing south of Point Arguello to purchase a finfish trap permit. The proposed regulations seek to exempt NFP holders with trap endorsements from the finfish trap permit requirements (general trap permit requirements would still apply). This change would be the final step in incorporating finfish trap permittees in the nearshore restricted access program. Additionally, the Department is planning on asking the Legislature to repeal Fish and Game Code Section 9001.5, which governs finfish trap permits.

Clarify North Coast Region initial permit issuance criteria

Existing regulations for initial permit issuance criteria in the North Coast Region state that to be eligible for a permit each individual must have possessed a 2002-2003 NFP, and landed nearshore fish stocks between January 1, 1994 through December 31, 1999, as well as made at least one landing of nearshore fish stocks in either 2000 or 2001 (Section 150(d)(1), Title 14, CCR). The proposed regulations seek to clarify initial permit issuance criteria for the North Coast Region by requiring at least one nearshore landing during the 1994-1999 time period. The Department intended that qualifications include at least one nearshore landing from 1994 through 1999 and has interpreted the current regulations that way. This change clarifies existing regulations and makes them consistent with the initial permit issuance criteria for other regions.

Clarify status of non-transferable permits

Existing regulations for transferable NFPs and trap endorsements allow for the transfer of the permit to the estate of a deceased permit holder for the purposes of selling the permit. Those regulations do not directly address the status of non-transferable permits and endorsements. The

proposed regulations clarify that all non-transferable permits (NFPs, trap endorsements, and NFBPs) are null and void upon the death of the permit holder. The proposed change would clarify that transferring applies only to transferable permits regardless of the circumstances.

Add permit application references

Existing regulations do not explicitly reference or directly provide applications for a Nearshore Fishery Permit, Nearshore Fishery Trap Endorsement, Nearshore Fishery Bycatch Permit, and Deeper Nearshore Species Fishery Permit. The proposed regulations incorporate those applications by reference.

Amend transferability provisions when at capacity goal

Existing regulations describe the process for transferring NFPs and explicitly describe processes to be used for transferring permits when a region is at or below the capacity goal. Those processes may not be feasible when the number of permits have been reduced to that level. The proposed regulations would clarify permit transfer processes that are currently applicable and remove the subsection that would guide transfers when a region's permit totals are at or below the capacity goal. This action gives the Commission the opportunity to develop appropriate transfer options at a later date.

Align commercial seasons and trip limits for all sectors

Existing regulations describe commercial fishing seasons and cumulative trip limits for nearshore species (Sections 150.06, 150.16, and 189, Title 14, CCR). However there are no references to the Nearshore Fishery Bycatch Permit (NFBP) in any of these sections. Nor does Section 150.05, Title 14, CCR, which regulates the NFBP, refer to these sections. The proposed change would state that the commercial fishing season and cumulative trip limits apply to NFBP holders. This is necessary so that individuals taking nearshore species under a NFBP could not take nearshore fish stocks when the directed fishery is closed. Additionally, the proposed change would keep NFBP holders from exceeding cumulative monthly trip limits even if the daily trip limits specified in Section 150.05(d), Title 14, CCR, are not exceeded.

The purpose of a NFBP was to allow individuals using trawl or gillnet gear that previously held an NFP to continue fishing for nearshore species with their traditional gear in a limited fashion. This proposed change would ensure that NFBP holders would not have greater access to the permitted species than NFP holders.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1050, 7071, and 8587.1, Fish and Game Code.

Reference: Sections 1050, 7071, 7850, 7852.2, 7857, 7858, 8043, 8046, 8102, 8496, 8585.5, 8587, 8587.1, 8588, 8589.5, 8589.7, 9001 and 9001.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None
- (d) Identification of Reports or Documents Supporting Regulation Change:

Nearshore Fishery Management Plan, adopted October 25, 2002. Department of Fish and Game.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

No public meetings are being held prior to the notice publication.

- IV. Description of Reasonable Alternatives to Regulatory Action:
 - (a) Alternatives to Regulation Change:

One alternative is to allow anyone with a NFP, transferable or non-transferable, to purchase a trap endorsement during the first year. This could result in a significant increase in trap use. Traps target certain species such as California sheephead and cabezon. An increase in trap use could result in increased effort for these species and may result in lower trip limits to ensure that the commercial fishery does not exceed its Optimum Yield (OY) for these species.

Another alternative would be to allow non-transferable NFPs, trap endorsements and NFBPs to be transferable in the event the permit holder dies. This would allow the permit holder's estate to recoup the costs of the permit holder's investment. However, in other fisheries that is an opportunity reserved for transferable permit holders who have more invested in the fishery and met more rigorous qualifying criteria for their permit.

A third alternative is to allow NFBP holders to continue to take nearshore species when the directed fishery is closed. While this may reduce some

of the discards, it may cause the commercial nearshore fishery to exceed its OY for one or more species groups.

(b) No Change Alternative:

Requiring NFP holders with trap endorsements to purchase finfish trap permits requires the NFP holders to purchase two permits to participate in a restricted fishery for the same species. Allowing NFBP holders to fish for nearshore species when the directed fishery is closed and/or exceed the cumulative bimonthly trip limits could result in exceeding the OY for one or more species groups. Denying non-transferable NFP holders with finfish trap permits a trap endorsement cuts them out of a limited entry program that they were otherwise entitled to participate in. Additionally, leaving the current regulations in place leaves some subsections open to interpretation.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These regulations seek to clarify language already in place so there would be little change in any business practices.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed action is not expected to create or eliminate any jobs or businesses within the State of California.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Informative Digest/Policy Statement Overview

Current nearshore fishery restricted access regulations include initial permit issuance criteria for transferable Nearshore Fishery Permits (NFP), non-transferable NFPs for 20-year fishermen as required by Fish and Game Code Section 8101, trap endorsements, and Nearshore Fishery Bycatch Permits (NFBP). In addition, current regulations provide regional capacity goals, permit transferability, application fees and renewal deadlines, as well as identifying gears authorized for use in the fishery.

The proposed changes to the nearshore fishery restricted access program regulations would authorize issuance of non-transferable trap endorsements to individuals who both qualify for non-transferable NFPs and meet the qualifying criteria for a trap endorsement. The proposed changes would also remove the requirement for a finfish trap permit, although general trap permits would still be required. Additionally, the proposed changes would clarify language regarding initial issuance criteria for the North Coast Region, clarify status of non-transferable permits when the permit holder dies, place permit applications in the regulations, and allow the Commission to adopt different transfer requirements when a region is at or below the capacity goal. Finally, the proposed changes would align the nearshore bycatch fishery seasons and cumulative trip limits with those used to control to the directed fishery.

Authorize non-transferable trap endorsements

Existing regulations prohibit the issuance of trap endorsements to holders of non-transferable NFPs. The proposed regulatory change rectifies that oversight by authorizing issuance of a non-transferable trap endorsement to fishermen with non-transferable NFPs if they meet the trap endorsement criteria for their region. Incorporating finfish trap permittees into the nearshore fishery was one of the goals of the restricted access program. This would allow these individuals to continue fishing in their traditional method.

Remove finfish trap permit requirements

Existing regulations require NFP holders to also possess a finfish trap permit. The proposed regulatory change would exempt NFP holders with trap endorsements from the finfish trap permit requirements (possessing a general trap permit would still be required). This change would be the final step in incorporating finfish trap permittees in the nearshore restricted access program. In addition, it would eliminate the expense of the finfish trap permit fee in addition to the NFP, trap endorsement and general trap permit fees.

Clarify North Coast Region initial permit issuance criteria

Existing regulations describing North Coast Region initial permit issuance criteria do not explicitly state that at least one nearshore landing is required during the qualifying time period (1994 to 1999) to satisfy the qualification criteria. The proposed regulatory change clarifies that requirement. The Department intended that qualifications include at least one nearshore landing from 1994 through 1999 and has interpreted the current regulations that way.

Clarify status of non-transferable permits

Existing regulations provide for transferring a transferable NFP to the estate of a deceased permit holder for the purposes of selling the permit. Those regulations do not directly address the status of non-transferable permits and endorsements under those circumstances. The proposed regulatory change clarifies that all non-transferable permits (NFPs, trap endorsements, and NFBPs) are null and void upon the death of the permit holder. The proposed change would clarify that transferring applies only to transferable permits regardless of the circumstances.

Add permit application references

Existing regulations do not explicitly reference or directly provide applications for a Nearshore Fishery Permit, Nearshore Fishery Trap Endorsement, Nearshore Fishery Bycatch Permit, and Deeper Nearshore Species Fishery Bycatch Permit. The proposed regulations incorporate those applications by reference.

Amend transferability provisions when at capacity goal

Existing regulations describe the process for transferring NFPs and explicitly describe processes to be used for transferring permits when a region is at or below the capacity goal. Those processes may not be feasible when the number of permits have been reduced to that level. The proposed regulatory change would clarify permit transfer processes that are currently applicable and remove the subsection that would guide transfers when a region's permit totals are at or below the capacity goal. This action gives the Commission the opportunity to adopt appropriate transfer options at a later date.

Align commercial seasons and trip limits for all sectors

Existing regulations do not clearly establish that the commercial fishing season and cumulative trip limits, as described in Section 150.06, 150.16, and 189, Title 14, CCR, apply to Nearshore Fishery Bycatch Permit (NFBP) holders. The proposed regulatory change spells this out. This change is necessary so that individuals taking nearshore species under a NFBP are prohibited from taking nearshore fish stocks when the directed fishery is closed. The proposed changes also prohibit NFBP holders from exceeding the cumulative monthly trip limits even if the daily trip limits specified in Section 150.05(d), Title 14, CCR, are not exceeded. Without implementation of the proposed changes, NFBP holders would have greater access to permitted species than would NFP holders.